IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE CIVIL JURISDICTION

Writ Petition No 4722 of 2004

Khushiram Tarachand Pvt Ltd ...Petitioner
vs
The Board of Trustees of
Port of Bombay .....Respondents

Mr.Gautam Bhat i/b Bharat & Co for petitioner
Mr U J Makhija with A D Tegade i/b Mulla and
Mulla & CBC for Respondents

CORAM: A.P.SHAH J.
Dated 3.l0.2005

P.C:

l. This petition under Article 227 of the Constitution challenges the judgment and order of the appellate bench of the Court of Small Causes dismissing the appeal from the eviction order passed by the trial judge under section 4l of the Presidency Small Causes Court Act. The suit was filed by the respondents being the trustees of the Port of Bombay for recovery of possession of plot of land which was originally leased to one Abdul Majid Hali Suleman Noorani under a lease deed dated ll.7.l944. The petitioners are the successors in interest of said Abdul Majid for the unexpired period of lease. The leased expired on 3l.l2.l952. Thereafter the respondent terminated the tenancy of the petitioners by quit notice and filed the

present suit for recovery of possession. The suit was decreed by the trial court and that decree has been confirmed by the appellate bench.

2. The only submission made before me by the learned counsel for the petitioner is that the impugned judgement is erroneous and is liable to be set aside as the said plot of land is entitled to the protection of the provisions of the Bombay Rent Act and respondents are not entitled to a decree for eviction as none of the grounds of eviction under that Act has been made out. Reliance is placed on sub-section (4)(a) of section 4 of the Bombay Rent Act. On the other hand learned counsel appearing for the respondents submitted that a lessee of the property of the port trust is not entitled to claim protection of sub-section (4)(a) of section 4 and such protection is available only in respect of building constructed pursuant to any obligation imposed on the lessee to put up building and such protection is available to a sub-lessee and that too only against the lessee and not against the Port Trust.

3. Sub-section (l) of section 4 of the Act which deals with exemptions reads as follows:

"This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority".

4. Sub-section (4)(a) of section 4 which was introduced in the Bombay Rent Act by the Bombay Act 4 of l953 runs as follows:

"(4)(a). The expression "premises belonging to the Government or a local authority as contained in the said sub-section or in any judgement, decree or order of a court, not include a building erected on any land held by any person from the Government or any local authority under an agreement, leased or other grant, although having regard to the provisions of such agreement, lease o rant the building so erected may belong to continue to belonging to the Government or

the local authority,as the case may be, and (b)....."

5. It was contended by the learned counsel for the petitioner that the original structure standing on the property was destroyed in bomb blast and thereafter a new construction was put up by the petitioner with the permission of the Bombay Port Trust which is admittedly a local authority as contemplated under section 4 of the Bombay Rent Act and thus the land as well as the structure stand excluded from the scope of exemption provided by section (l) of section 4 of the Bombay Rent Act as the case falls within the scope of sub-section (4)(a) of section 4 of the Bombay Rent Act.

6. I find absolutely no merit in the submission of the learned counsel for the petitioner. It is now settled by at least two decisions of the Supreme Court that sub-section (4)(a) of section 4 was introduced in order to protect sub-lessee from eviction who has been inducted in the building constructed under a building lease granted by the Government/ local authority. We may at this stage notice the legislative history in connection with sub-section (4)(a) of section 4 of the Bombay Rent

Act. Section 4(l) of the Bombay Rent Act came up for consideration in the case of Bhatia Cooperative Housing Society Ltd vs D.C.Patel (l953) 4 SCR l85. The facts in that case were that the building cite was auctioned to a builder by the City Improvement Trust of Bombay with a condition that the builder was to put up a building thereon of a certain description at a cost of not less than Rs.50,000 and after the completion of the building, the site and the building were to be leased to the builder for a period of 999 years at a fixed yearly rent. It was held that the building belonged to the Improvement Trust and not to the builder and a suit by the lessee of the Improvement Trust against his sub-lessee was not governed by the Bombay Rent Act as the premises belonged to a local authority within the meaning of section 4(l) of the Act In analysing section 4(l) of that Act, the Court pointed out that the sub-section has three parts,namely (l) the Act shall not apply to premises belonging to the Government or a local authority, (2) the Act shall not apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government and (3) the Act

shall apply in respect of premises let out to the Government or a local authority. The court observed that the conclusion was,therefore, irresistible that the Legislature did not by the first part intend to exempt the relationship of the landlord and tenant but intended to confer on the premises belonging to Government an immunity from the operation of the Act. The contention of the counsel for the sub-lessee that the immunity given by the first part should be held to be available only to the Government or a local authority to which the premises belonged was rejected. It was held that if the benefit of the immunity was given only to the Government or a local authority and not to its lessee and the Act applied to the premises as against the lessee, it must follow that under section l5 of the Bombay Rent it would not be lawful for the lessee to sublet the premises or any part of it and that if such were the consequences nobody would take a building lease from the Government or a local authority and the immunity given to the Government or a local authority would for all practical purposes, and in so far as at any rate as the building leases are concerned be wholly illusory and worthless and the underlying purpose for bestowing such immunity will be rendered wholly

ineffective. As a result of this decision the sublessees in a building put up by a lessee from the Government or a local authority under a building lease did not get any protection from being evicted at the sweet will of the lessee and were denied the benefit of the provisions of the Bombay Rent Act. In order to obviate this hardship of such sub lessees, sub-section (4)(a), set out earlier, was introduced into the provisions of the Bombay Rent Act.

7. In Kanji Manji vs. The Trustees of Port of Bombay and ors, AIR l963 SC 468, the Supreme Court held that if the local authority wants to evict anyone from the land belonging to the local authority, Rent Act does not come in the way. It is also held that if the original lessee took on rent not only land but also buildings, it is not open to their assignees to claim that the ownership of the Government extended only to the land and not to the buildings. In Maneklal and Sons vs Trustees of Port of Bombay l987 3 SCC 733, the court after considering the decision of this court in Ram Bhagwandas vs Municipal Corporation of the City of Bombay, AIR l956 Bombay 364 pointed out as observed by Chagla , C.J., in the case of Ram Bhagwandas

(supra) by enacting sub-section (4)(a) of section 4 of the Bombay Rent Act, the Legislature was seeking to protect by that sub-section tenant who occupied buildings put up upon land belonging to a local authority if the building occupied by them were constructed under an agreement under which the lessee was under an obligation to construct buildings. The protection of sub section (4)(a) was to buildings and not to lands and the phrase "under an agreement, lease or other grant" modified not only the expression "held by any person from the Government or a local authority" but also "erected on any land".

8. In Nagji Vallabhji and Co vs Meghji Vijpar & Co AIR l988 SC l3l3, the Court following the decisions in the case of Bhatia Coop Housing Society Ltd (supra) and Maneklal and Sons (supra) held as follows:

> "It was urged before us by Dr Chitale that if the sub-lessee in a building put up by the lessee on land leased from the Government or a local authority under a building leased entitled to the protection of the Bombay Rent Act under the provisions

of section 4(4)(a) thereof,there is .no reason why such protection should be denied to a sublessee in any building belonging to the Government or a local authority and taken on lease by a private party regardless of the question as to who has put up the building. That may or may .not be so but what we have to examine is whether the intention to confer such protection can be imputed to the legislature on the language of the said subsection read in the context of the relevant provisions of the Bombay Rent Act. The plain reading of sub section (l_ of ;section 4 makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging tot he Government or a local authority. Sub section (4)(a) only takes out from the scope of the exemption conferred by section 4(l) "a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant the building so erected may belong or continue to belong to the Government or the local authority as the case may be." If this provision were to be

construed as including any building put up or erected on land held by any person from the Government or a local authority, the result would be that such protection would be available even against the Government or a local authority and the provisions of sub section (l) of section 4 may be rendered largely nugatory. It is not disputed by Dr.Chitale that the provisions of sub section (4)(a) were never intended to take away the immunity conferred upon the premises belonging to the Government or a local authority and if the provisions of section 4(4)(a) were to be construed as urged by Dr Chitale this immunity would be rendered practically nugatory. In fact, a plain reading of the provisions of sub section (4)(a) in the context clearly show that there is no intention therein to take out a building put up by the Government or a local authority from the scope of the exemption conferred by subsection (l) of section 4. In fact,the language of sub section (4)(a) and sub section (l) of section 4 of the Bombay Rent Act read together suggests that it was only in

respect of a building put up by the lessee on the Government land or land belonging to a local authority under a building agreement that the sub-lessees were taken out of the exemption contained in sub section (l) of section 4 and allowed the benefit of the provisions of the Bombay Rent Act. It is significant that the exemption granted under the earlier part of sub section (l) of section 4 is in respect of the permission and not in respect of the relationship. In order to confer the protection of the provisions of the Bombay Rent Act to the sublessees occupying the premises in any building erected on Government land or on land belonging to a local authority irrespective of the question who has put up the building as against the lessees of the land but without affecting the immunity conferred to the Government or local authorities as contemplated by sub section (l) of section 4 of the Bombay Rent Act we would have practically rewritten the provisions of section 4 and it is not open to ;us to do that. We are, therefore unable to accept the argument of Dr. Chitale and

> we are of the view that the learned Judge of the High Court of Bombay was right in coming to the conclusion that the premises in question were not entitled to the benefit of the provisions of the Bombay Rent Act".

9. In the result, I hold that the petitioner who is original lessee is not entitled to the protection of Bombay Rent Act and consequently the petition is dismissed.